

REMARKS

Applicants note that the Examiner has included in the 11/19/03 restriction requirement restrictions for claims 27-66. Please note that claims 27-66 were cancelled by way of preliminary amendment (See item 13 of Transmittal of 1/18/2002, at page 1). Please add new claims 67, 68 and 69. These claims correspond to originally filed claims 12, 14 and 25.

In response to the Examiner's comments concerning "improper Markush groups" (See 11/19/03 Restriction Requirement at page 1), Applicants respectfully submit that the claims are in proper Markush format in that: 1) all elements of the "Markush groups" (i.e. "fragments" and "variants" of SEQ ID NO:1) are related to SEQ ID NO:1 and thus share a common structural feature, and 2) Incyte Corporation has numerous other issued U.S. patents having the same claim language.

In response to the Restriction Requirement, Applicants hereby elect with traverse the claims of Group I (Claims 1-7, 9, 11-12, 16-18, 30-33 and 59-60), in part drawn to isolated polypeptides and to polynucleotides encoding the polypeptides, host cells, vectors, and methods of making polypeptides encoded by the polynucleotides, with traverse. In response to the requirement for election of a sequence, Applicants elect with traverse to prosecute the claims related to polynucleotide sequences encoding the polypeptide of SEQ ID NO:1, the polynucleotide sequences including SEQ ID NO:5.

Applicants traverse both the restriction requirement and the obligation to elect a single sequence for prosecution which were imposed in the Office Action mailed November 24, 2003 for at least the following reasons.

Applicants submit that claims directed to methods of using the claimed polynucleotides and polypeptides, (i.e., claims 13-15, 19, 22, 25 and 26) could and should be examined together with the product claims from which they depend, per the Commissioner's Notice in the Official Gazette of March 26, 1996, entitled "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer* and 35 U.S.C. § 103(b)" which sets forth the rules, upon allowance of product claims, for rejoinder of process claims covering the same scope of products. Applicants presume these method claims will be rejoined, upon determining allowability of the product claims from which they depend.


Applicants reserve the right to prosecute non-elected subject matter in subsequent divisional applications.

If the Examiner contemplates other action, or if a telephone conference would expedite allowance of the claims, Applicants invite the Examiner to contact the undersigned at (650) 621-8581.

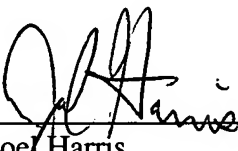
Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. 09-0108.

Respectfully submitted,
INCYTE CORPORATION

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